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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 139

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SUPREME COURT, U.S.

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION,

Petitioner,

vs.

UNITED STATES OF AMERICA, EX REL. IGNATZ MEZEI

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

For more than two years—from February 9, 1950 until May 2, 1952, respondent was detained and restrained of his liberty. He violated no law and he committed no crime. He was accused of no wrongdoing. No charges were ever lodged against him or made known to him. The petitioner asserts, that in a "very true sense" (R. 13) respondent was not detained, and yet during this period, Ignatz Mezei was incarcerated behind bars at Ellis Island, the same as any other detained alien.

Petitioner alleges that in the absence of any statutory provisions authorizing detention, and in spite of the Con-

stitution, the respondent may and should be restraine
of his liberty without reference to the calendar (and
haps for the rest of his natural life), without charging
with a crime, without notice of charges, and witho
hearing.

Respondent, a native of Great Britain came to the Un
States in 1923 and resided here for twenty-five years u
1948 when he went to Europe in an attempt to visit
dying mother. During his residence in the United Sta
respondent worked for the United States Coast Guard,
an air-raid warden, donated blood three times and enga
in the sale of United States war bonds (R. 4). In 1950,
spondent embarked from France in possession of app
priate documents and sought to reenter the United Sta
to reside here with his American citizen wife. He was
cluded on May 10, 1950 by the Attorney General witho
hearing pursuant to 8 C.F.R. 175.57 (R. 4-5).

The statutory basis for respondent's exclusion with
a hearing is the Passport Act of 1918 as amended, whi
presently calls for a national emergency or war betwe
two foreign states to be operative (22 U.S.C. 223).

An excluded alien may only be deported pursuant to
U.S.C. 154 to the country whence he came. Deportation in t
instant case is therefore limited to the country of embark
tion, France or the country of respondent's citizenship. *U.*
ex rel. Consola v. *Karnuth*, 63 F. Supp. 727 at 730; *Bellask*
v. *Crossman*, 164 F. 2d 412, reversed 335 U.S. 840. Franc
the country, of embarkation, and Great Britain, the cou
try of his nativity and citizenship, have refused to acce
respondent as well as 12 Latin American countries (R. 1
37). No claim is made that respondent is a citizen
Hungary, Roumania or of any other iron-curtain country, a
though petitioner seems to assume that deportation may h

directed to such countries in the absence of statutory authorization.

Respondent has asserted that there is no country to which he can be deported (R. 7, Par. 21). This allegation is deemed admitted by the Government because of its failure to controvert it. *Whitten* v. *Tomlinson*, 160 U.S. 231, 242. The courts below have moreover, found that the facts support this allegation (R. 38, 60) and such finding is not now subject to review since it is not clearly erroneous *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 342.

Issue Presented

The issue presented is whether an excluded alien, whose removal or deportation cannot be effectuated because of lack of a receiving country, may, in the absence of statutory authorization and without regard to constitutional guarantees, be detained indefinitely or for the rest of his natural life at Ellis Island.

Argument

The decision below, 195 F. 2d 964 (R. 59), that an excluded alien may be enlarged or paroled, is consistent with this Court's declaration in *Wong Wing* v. *United States*, 163 U.S. 228, 235 that: "detention or *temporary confinement*, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid." It is in harmony with *Kaplan* v. *Tod*, 267 U.S. 228 which recognized that the parole of an excluded alien merely enlarged his prison bounds and did not result in his legal admission to the United States.

The power to release an excluded alien from continued unreasonable detention when deportation can not be effectuated has as noted below (R. 63) "been widely accepted by the district courts". *In re Krajcirovic*, 87 F. Supp. 379;

Staniszewski v. *Watkins*, 80 F. Supp. 132; *U. S. ex rel. Chu Leung* v. *Shaughnessy*, 88 F. Supp. 91.

There is no statute authorizing the detention of an excluded alien. The power to detain is read into our immigration laws as a necessary incident to the power to exclude. The court below adhering to this Court's views in *Wong Wing* v. *United States*, *supra*, properly confined this implied power to that of temporary detention for a reasonable time.

A contrary position finds no support in *Ludecke* v. *Watkins*, 335 U.S. 160 or *Schwarzkopf* v. *Uhl*, 137 F. 2d 898 in view of the *statutory* provisions there involved for the detention of dangerous alien enemies during a declared war. *Korematsu* v. *United States*, 323 U.S. 214 is likewise inapposite for it involved specific provisions for exclusion by the military of persons from critical war areas during hostilities and a declared war. And, *Carlson* v. *Landon*, 342 U.S. 524, petitioner's concluding authority for the proposition that prolonged and unreasonable detention has been authorized by Congress is equally inapplicable. The court below properly noted that the *Carlson* "opinion is in fact quite carefully limited to the case in hand." There, this Court stated at 342 U.S. 546 "that the problem of *habeas corpus* after unusual delay in deportation hearings is not involved in this case".

The very problem of the instant case is that of unusual delay—of over two years—in effectuating deportation in an exclusion case because no country will receive the respondent.

Conclusion

The decision below is in harmony with decisions of this Court. It is not in conflict with decisions of any other circuit. The contention of the petition, that indefinite detention of an alien at Ellis Island may be sanctioned in

peacetime in the absence of statute, and within the framework of our Constitution, is clearly without merit. We submit that the petition for a writ of certiorari should be denied.

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